

In the Supreme Court of the State of Alaska

Kelley Maves,

Appellant,

v.

**State of Alaska, Department of Public
Safety,**

Appellee.

Supreme Court No. **S-17492**

Order

Motion to Reconsider Single-Judge
Order re: Attorney's Fees

Date of Order: **4/12/2021**

Trial Court Case No. **3AN-15-08842CI**

Before: Bolger, Chief Justice, Winfree, Maassen, and Carney,
Justices

The Alaska Department of Public Safety required Appellant Kelley Maves to register for life under the Alaska Sex Offenders Registration Act (ASORA) based on two 1997 convictions in Colorado, one of which had been set aside. Maves appealed the decision to the superior court, which determined that the Department's application of the 1998 version of ASORA to Maves's case violated the ex post facto clause of the Alaska Constitution. We reversed the superior court's decision, holding that the ex post facto clause did not apply because a regulation existing at the time of Maves's convictions gave him notice that a set-aside conviction could be covered by ASORA.

On remand, the superior court decided that the regulation had been validly promulgated and that it applied to Maves's set-aside conviction. Maves appealed again. We reversed again, holding that the regulation was invalid because it was outside the scope of its enabling legislation. By a single-justice order, the court awarded attorney's fees to neither party.

Maves now moves for full-court reconsideration of that attorney's fees order. He contends that he is a constitutional litigant under AS 09.60.010(c)(1) and therefore entitled to "full reasonable attorney fees." The statute authorizes fee awards

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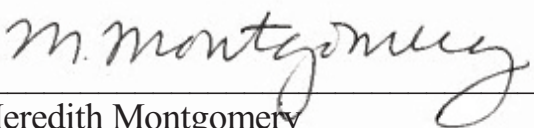
to prevailing litigants in appeals “concerning the establishment, protection, or enforcement of a right under the United States Constitution or the Constitution of the State of Alaska,” but only if the claimant “has prevailed in asserting the right.” In the superior court and on his first appeal, Maves asserted a constitutional right under the ex post facto clause, but he lost on that claim both in the superior court and here. The constitutional right was no longer at issue on this appeal, which we decided on grounds of statutory interpretation. Because Maves did not “prevail[] in asserting a [constitutional] right,” he falls outside the plain language of AS 09.10.060(c)(1).

Therefore, on consideration of the appellant’s **2/1/2021** motion for full-court reconsideration of the 1/20/2021 Order Regarding Fees and Costs, and no opposition having been received,

IT IS ORDERED: The motion is **DENIED**.

Entered at the direction of the court.

Clerk of the Appellate Courts


Meredith Montgomery

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